

### **Remarks**

The above Amendments and these Remarks are in reply to the Final Office Action mailed February 19, 2009.

#### **I. Summary of Examiner's Rejections**

Prior to the Final Office Action mailed February 19, 2009, Claims 8-20, 22, 24, 26, 27 and 29 were pending in the Application. In the Final Office Action, Claims 8, 10, 15, 17, 22 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah et al. (U.S. Patent No. 6,538,992, hereinafter Subbiah) in view of Dravida et al. (U.S. Patent No. 7,146,630, hereinafter Dravida) and further in view of Zweig (U.S. Patent No. 7,280,495, hereinafter Zweig). Claims 11 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further view of Lefebvre (U.S. Patent No. 7,123,619, hereinafter Lefebvre). Claims 9, 14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further view of Henderson et al. (U.S. Patent No. 7,133,400, hereinafter Henderson). Claims 12, 13, 19, 20, 26, 27 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further view of Baum et al. (U.S. Patent No. 6,850,495).

#### **II. Summary of Applicants' Response**

The present Response amends Claims 8, 9, 11-14, 16, 18-20 and 22, leaving for Examiner's present consideration Claims 8-20, 22, 24, 26-27 and 29. Reconsideration of the Application is respectfully requested. Applicants respectfully reserve the right to prosecute any originally presented or canceled claims in a continuing or future application.

#### **III. Claim Rejections under 35 U.S.C. § 103**

In the Final Office Action, Claims 8, 10, 15, 17, 22 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah et al. (U.S. Patent No. 6,538,992, hereinafter Subbiah) in view of Dravida et al. (U.S. Patent No. 7,146,630, hereinafter Dravida) in further view of Zweig et al. (U.S. Patent No. 7,280,495, hereinafter Zweig). Claims 11 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further view of Lefebvre (U.S. Patent No. 7,123,619, hereinafter Lefebvre). Claims 9, 14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further

view of Henderson et al. (U.S. Patent No. 7,133,400, hereinafter Henderson). Claims 12, 13, 19, 20, 26, 27 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Dravida in view of Zweig in further view of Baum et al. (U.S. Patent No. 6,850,495).

#### **Claim 8**

Claim 8 has been amended to more clearly define the embodiment therein. As amended, Claim 8 defines:

8. *A method for allowing a user to select a quality of service for message delivery, comprising:*  
*storing a selection of at least one of a first quality of service choice and a second quality of service choice for each user of an application server that employs a messaging service to deliver messages between a plurality of users, wherein the selection determines whether or not the user will be ensured of receiving the messages;*  
*receiving, to said application server, one or more messages and processing each of the one or more messages received on a data stream using a single API of the messaging service;*  
*segregating the plurality of users into a first group and a second group according to the selection of the quality of service choice associated with said each user such that users in the second group will be ensured of receiving the messages, while users in the first group will not be ensured of receiving the messages;*  
*multicasting the message to the first group selecting the first quality of service wherein each user in the first group is not ensured of receiving said message;*  
*sending the message directly to each user in the second group selecting the second quality of service via point-to-point protocol and ensuring that the user in the second group receives the message; and*  
*receiving, by the messaging service of the application server, a response that delivers an acknowledgement of receipt of the message from the second group of users selecting the second quality of service choice and receiving no acknowledgement from the first group of users selecting the first quality of service choice;*  
*wherein the application server transmits a single message by both (1) multicasting said message and (2) directly sending said message via the point-to-point protocol to multiple users.*

The features of Claim 8, enable a developer using an application server to register a QOS selection with the application server's messaging service that specifies whether the user will be ensured of receiving messages. The developer can thus register applications that require fast but less reliable service with the first QOS selection and applications that require reliable transmission can

be registered with the second QOS selection. Yet other applications can be registered with both ways of communication at the application server.

Subbiah describes a mobile communication system where the QOS requirement for each user is obtained or computed based on the call set up. This QOS requirement is essentially the wireless connection speed assigned for each user. For example, some users may pay more for a premium faster connection, while others wish to obtain a slower and less costly service (col. 2, lines 29-33, 57-62). Packets with the same QOS are then grouped to the same queue.

Dravida teaches a broadband system with intelligent network devices. More specifically, Dravida appears to describe a format for an Ethernet packet. The Ethernet packet includes an access header which has QOS bits. These QOS bits are used to prioritize traffic of the packets.

Zweig teaches a reliable broadcast protocol in wireless networks. A protocol is described that allows acknowledging receipt of a multicast frame by a wireless unit. More specifically, a wireless access point supports the transmission of data frames to groups of mobile units and also allows those mobile units to send back an acknowledgement.

However, the cited references fail to render obvious the features in Claim 8. For purposes of clarity, the following are some of the claim elements that illustrate the distinctions between Claim 8 and the cited references:

First, the cited references fail to disclose storing a QOS selection for each user of an application server, as defined in Claim 8. None of the cited references disclose this functionality. In the Office Action, it was agreed that Subbiah fails to teach this functionality (Office Action, page 3). It was proposed, however, that Dravida and Zweig disclose this feature. Applicant respectfully disagrees. The cited portions of Dravida describe a hardware based switch within an Ethernet network that uses QOS bits to prioritize network traffic (col. 18, lines 33-67). However, this is clearly not application server technology and even more importantly, there is no disclosure whatsoever of storing a QOS selection for each user of an application server, as defined in Claim 8.

Similarly, Zweig describes a network protocol that allows a wireless unit to acknowledge receipt of a multicast message. Once again, however, Zweig is not concerned with application servers and clearly does not disclose storing a QOS selection for each user of an application server.

Second, the cited references fail to disclose that the QOS selection will determine whether the user will be ensured of receiving a message, as defined in Claim 8. While some of the references do mention some form of reliable transmission protocols, none of them describe that a QOS

selection determines whether the user will be ensured of receiving their messages. For example, Zweig mentions reliable protocol for wireless devices, however, it does not describe any QOS selection associated with the user that will determine whether that user will be ensured of getting her/his message. Similarly, Dravida mentions QOS bits that are used to prioritize network traffic in a hardware based switch, however it fails to disclose that the stored QOS selection determines whether the user is ensured of receiving the message. In the same way, Subbiah mentions a QOS choice that determines the speed of internet access for each user, however, once again there is no disclosure of a QOS selection that determines whether the user is ensured of receiving the message, as defined in Claim 8.

Third, the cited references fail to disclose the step of segregating users into two groups where users in the second group will be ensured of receiving the messages, while users in the first group will not be ensured of receiving the messages, as defined in Claim 8. There appears to be no separation of users into multiple groups based on their QOS selection in any of the cited references.

Fourth, the cited references fail to disclose that the application server's messaging service will obtain an acknowledgement from the second group of users and will not obtain an acknowledgement from the first group of users based on their selection of quality of service choice associated with each user, as defined in Claim 8. None of this functionality is described in the references.

Fifth, the cited references fail to disclose that the application server transmits a single message by both a reliable and unreliable protocol, as defined in Claim 8. Since none of the cited references are concerned with application server technology, they clearly do not disclose an application server that transmits one message in both ways.

In light of the above remarks and amendments, Applicants respectfully submit that Claim 8, as amended, is neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

#### **Claims 15, 22 and 24**

Claims 15, 22 and 24, while independently patentable, recite limitations that, similarly to those discussed above with respect Claim 8, are not taught, suggested, nor otherwise rendered obvious by the cited references. Reconsideration thereof is respectfully requested.

#### **Claims 9-14, 16-20, 26-27 and 29**

Claims 9-14, 16-20, 26-27 and 29 are not addressed separately, but it is respectfully submitted that these claims are allowable as depending from an allowable independent claim, and further in view of the comments provided above. Applicants respectfully submit that Claims 9-14, 16-20, 26-27 and 29 are similarly neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

It is also submitted that these claims also add their own limitations which render them patentable in their own right. Applicants respectfully reserve the right to argue these limitations should it become necessary in the future.

#### **IV. Conclusion**

In view of the above remarks, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and reconsideration thereof is respectfully requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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By: /Justas Geringson/  
Justas Geringson  
Reg. No. 57,033

Customer No.: 80548  
FLIESLER MEYER LLP  
650 California Street, 14<sup>th</sup> Floor  
San Francisco, California 94108  
Telephone: (415) 362-3800